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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RONALD STOCKER; SHELLY
LAWRENCE,

Plaintiffs - Appellants,

v.

FRED L. BESS; et al.,

Defendants - Appellees.

No. 03-35972

D.C. No. CV-03-05134-FDB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted February 13, 2006^{**}

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Ronald Stocker and Shelly Lawrence appeal from the district court's orders dismissing their action for failure to prosecute and denying their motion to alter or

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

amend judgment. We have jurisdiction under 28 U.S.C. § 1291. Reviewing de novo, *Am. Soccer Co., Inc. v. Score First Enters.*, 187 F.3d 1108, 1110 (9th Cir. 1999), we vacate and remand.

Stocker and Lawrence filed a notice of dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(i) on October 8, 2003. The filing of the notice of voluntary dismissal automatically terminated the action, “leav[ing] no role for the court to play.” *Am. Soccer Co.*, 187 F.3d at 1110. Accordingly, we vacate the district court’s order filed October 9, 2003 dismissing the action for failure to prosecute. The notice of voluntarily dismissal effected a dismissal of the action without prejudice. *See* Fed. R. Civ. P. 41(a)(1).

The parties shall bear their own costs on appeal.

VACATED